

ASSEMBLY BILL

No. 2478

Introduced by Assembly Member Melendez

February 19, 2016

An act to amend Section 27590 of the Penal Code, relating to firearms, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2478, as introduced, Melendez. Firearms: violations.

Existing law prohibits specified persons from owning, purchasing, receiving, or having in his or her possession, any firearm. Existing law prohibits a person, corporation, or firm from knowingly selling, supplying, delivering, or giving possession or control of a firearm to one of those prohibited persons, and makes a violation of that prohibition a felony punishable by imprisonment for 2, 3, or 4 years in the county jail.

This bill would make that offense punishable by imprisonment for 2, 3, or 4 years in the state prison.

Existing law prohibits a person, corporation, or firearms dealer from selling, supplying, delivering, or giving possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a prohibited person, and makes a violation of that prohibition punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed \$1,000, or by both that fine and imprisonment. Under existing law, for each felony case, a court is required to hold, and a prosecutor is required to attend, a preliminary hearing.

This bill would make that offense a felony punishable by imprisonment for 2, 3, or 4 years in the state prison. By imposing

additional duties on local prosecutors by increasing the number of preliminary hearings, and by increasing the penalties of an existing crime, this bill would impose a state-mandated local program.

Existing law prohibits a person, corporation, or dealer from selling, loaning, or transferring a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm is to be subsequently sold, loaned, or transferred to avoid provisions of law requiring firearms transfers to be conducted through a firearms dealer and other requirements pertaining to dealer transactions, or to avoid provisions establishing exemptions from those requirements, as specified. Existing law makes this offense punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed \$1,000, or by both that fine and imprisonment.

This bill would make that offense a felony punishable by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

Existing law prohibits a person, corporation, or firearms dealer from acquiring a firearm for the purpose of selling, loaning, or transferring the firearm if, for a dealer, he or she has the intent to transfer the firearm to a minor or to evade specified requirements on the transfer of firearms, or in the case of a person or corporation, the person or corporation intends to violate the requirement, or provisions of an exception to the requirement, that the transaction be conducted through a licensed firearms dealer. Existing law makes this offense punishable as a misdemeanor by imprisonment in the county jail not exceeding one year, or as a felony punishable by imprisonment in the county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment.

This bill would make that offense punishable as a felony by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

The bill would appropriate an unspecified sum from the General Fund to the Department of Justice for vertical prosecution, as defined, of those offenses described above, by the department. The bill would require the department to submit a report to the Legislature and the

Governor, on or before January 1, 2020, which details the number of prosecutions filed and convictions obtained by the department for the offenses described above.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27590 of the Penal Code is amended to
2 read:
3 27590. (a) Except as provided in subdivision (b), (c), or (e),
4 a violation of this article is a misdemeanor.
5 (b) If any of the following circumstances apply, a violation of
6 this article is punishable by imprisonment pursuant to subdivision
7 (h) of Section 1170 for two, three, or four years.
8 ~~(1) If the violation is of subdivision (a) of Section 27500.~~
9 ~~(2)~~
10 (1) If the defendant has a prior conviction of violating the
11 provisions, other than Section 27535, Section 27560 involving a
12 firearm that is not a handgun, or Section 27565 involving a firearm
13 that is not a handgun, of this article or former Section 12100 of
14 this code, as Section 12100 read at any time from when it was
15 enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to
16 when it was repealed by Section 18 of Chapter 23 of the Statutes
17 of 1994, or Section 8101 of the Welfare and Institutions Code.
18 ~~(3)~~
19 (2) If the defendant has a prior conviction of violating any
20 offense specified in Section 29905 or of a violation of Section
21 32625 or 33410, or of former Section 12560, as that section read
22 at any time from when it was enacted by Section 4 of Chapter 931
23 of the Statutes of 1965 to when it was repealed by Section 14 of
24 Chapter 9 of the Statutes of 1990, or of any provision listed in
25 Section 16590.
26 ~~(4)~~

(3) If the defendant is in a prohibited class described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code.

~~(5)~~

(4) A violation of this article by a person who actively participates in a “criminal street gang” as defined in Section 186.22.

~~(6)~~

(5) A violation of Section 27510 involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

~~(c) If any of the following circumstances apply, a violation of this article—~~ *A violation of any of the following shall be punished by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment: imprisonment:*

~~(1) A violation of Section 27515, 27520, or subdivision (b) of Section 27500.~~

~~(2)~~

~~(1)~~ A violation of Section 27505 involving the sale, loan, or transfer of a handgun to a minor.

~~(3)~~

(2) A violation of Section 27510 involving the delivery of a handgun.

~~(4)~~

(3) A violation of subdivision (a), (c), (d), (e), or (f) of Section 27540 involving a handgun.

~~(5)~~

(4) A violation of Section 27545 involving a handgun.

~~(6)~~

(5) A violation of Section 27550.

~~(7)~~

(6) A violation of Section 27585 involving a handgun.

~~(d) If both of the following circumstances apply, an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed:~~

~~(1) A violation of Section 27510 or subdivision (b) of Section 27500.~~

~~(2) The firearm transferred in violation of Section 27510 or subdivision (b) of Section 27500 is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.~~

(d) An additional term of imprisonment for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed for a violation of Section 27510 or subdivision (b) of Section 27500 if the firearm transferred in violation of Section 27510 or subdivision (b) of Section 27500 is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(e) (1) A first violation of Section 27535 is an infraction punishable by a fine of fifty dollars (\$50).

(2) A second violation of Section 27535 is an infraction punishable by a fine of one hundred dollars (\$100).

(3) A third or subsequent violation of Section 27535 is a misdemeanor.

(4) For purposes of this subdivision each application to purchase a handgun in violation of Section 27535 shall be deemed a separate offense.

(f) A violation of the following shall be punished by imprisonment in the state prison for 16 months, or two or three years:

(1) A violation of Section 27515.

(2) A violation of Section 27520.

(g) A violation of Section 27500 shall be punished by imprisonment in the state prison for two, three, or four years.

SEC. 2. (a) The sum of ____ is hereby appropriated from the General Fund to the Department of Justice for vertical prosecution of straw purchases of firearms and knowing transfers of firearms to prohibited persons, in violation of Section 27500, 27515, or 27520 of the Penal Code, or any combination of those offenses.

(b) As used in this section, “vertical prosecution” means a specially trained deputy attorney general assigned to the case from its filing to its completion.

SEC. 3. (a) On or before January 1, 2020, the Department of Justice shall submit a report to the Legislature and the Governor which includes the number of prosecutions filed and convictions obtained by the department for violations of Sections 27500, 27515,

1 and 27520, pursuant to this act. The report shall be submitted in
2 compliance with Section 9795 of the Government Code.

3 (b) Pursuant to Section 10231.5 of the Government Code, this
4 section is repealed on January 1, 2024.

5 SEC. 4. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.